

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of

Review of the Section 251 Unbundling  
Obligations of Incumbent Local Exchange  
Carriers

CC Docket No. 01-338

Implementation of the Local Competition  
Provisions of the Telecommunications Act of  
1996

CC Docket No. 96-98

Deployment of Wireline Services Offering  
Advanced Telecommunications Capability

CC Docket No. 98-147

**REPLY COMMENTS OF  
TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.**

Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”), pursuant to the Commission’s January 7, 2004 Public Notice, DA 04-7, hereby submits these reply comments on the “Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets” (“Waiver Petition”) in the above captioned dockets.

**I. INTRODUCTION**

On January 30, 2004, the Puerto Rico Telephone Company, Inc. (“PRTC”) filed comments in the instant proceeding making a number of unsubstantiated allegations and incorrect statements regarding the impairment evaluation performed by the Puerto Rico Telecommunications Regulatory Board (“Board”) for enterprise market switching. In light of such comments, TLD would like to correct a number of allegations made by PRTC regarding the

Board's impairment evaluation, its findings, and the evidence available to the Board for reaching its impairment determination.

## II. COMMENTS

### 1. PRTC's attacks on the Board's impairment evaluation are without basis

To start, PRTC incorrectly argues in its comments that the Board's evaluation goes against the Commission's order. Specifically, by suggesting that "[t]he Board rejected the FCC's conclusions in favor of its own analysis" PRTC grossly misinterprets the Commission's Triennial Review Order ("TRO")<sup>1</sup> of August 21, 2003.

With respect to the analysis required, the TRO clearly sets forth the role of the state commissions in making more granular impairment determinations for certain network elements, including enterprise market switching:

The record before us and the D.C. Circuit's emphasis in *USTA* on granularity in making unbundling determinations both lead us to conclude that *asking states to take on some fact finding responsibilities would be the most reasonable way to implement the statutory goals for certain network elements. We find that giving the state this role is most appropriate where, in our judgment, the record before us does not contain sufficiently granular information and the states are better positioned than we are to gather and assess the necessary information.* A more granular analysis will also benefit small businesses by considering the differing levels of competition in rural and urban markets and the differing needs and resources of carriers serving mass market and small to medium business customers.[Emphasis supplied][TRO at ¶ 188]

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<sup>1</sup>*Report and Order and Order on Remand And Further Notice of Proposed Rulemaking, In the Matters of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Docket Nos. 01-338, 96-98, and 98-147, February 20, 2003, released on August 21, 2003.

In this case, the Board was clearly acting pursuant to the Commission's order when it gathered the necessary information to perform an impairment analysis for Puerto Rico markets. In fact, the Board was quite successful in obtaining specific information, including detailed business information, from several carriers operating in Puerto Rico in order to perform the required granular analysis.

Once the necessary information was gathered, the Commission further explained that state commissions were to perform their assessments in conformance with the guidelines established in the TRO:

We find that a delegation to the states with standards from the Commission will best ensure that our unbundling decisions are implemented consistently with the Act's purposes. We find this approach is consistent with the Supreme Court's view that the state commissions' participation in the "new federal regime" should be "guided by federal-agency regulations." We limit the states' delegated authority to the specific areas and network elements identified in this Order. ***To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.*** [Emphasis supplied][TRO at ¶ 189]

In some instances, the Commission set specific "triggers" and an impairment determination would hinge on whether the conditions set by these triggers were met or not. With regards to enterprise market switching though, the Commission did not set such specific guidelines. Instead, the Commission established that both economic and operational barriers to entry had to be considered as part of a state commission's impairment analysis for enterprise market switching. Such analysis was performed by the Board and the various factors that had to be considered to reach an impairment determination were discussed in detail in the Waiver Petition.

Nevertheless, PRTC seems to find fault with the Board's determination merely because the Board reached a conclusion pursuant to its own analysis that is different from the Commission's national impairment finding. But there is no basis in the TRO to support said allegation. In fact, the reason for performing a granular analysis in the first place was that the Commission concluded that impairment in the enterprise market may be found in specific geographic markets notwithstanding the national standard, and that state commission's were more favorably positioned to gather the necessary information and perform this analysis.<sup>2</sup> Thus, PRTC's contention that the Board somehow conducted its evaluation in a manner that violates the TRO doesn't hold any water.

**2. PRTC's attacks on the evidence available to the Board are without basis**

Separately, PRTC questions the evidence before the Board. PRTC's argues for instance that "a state commission filing a waiver petition must rely on types of evidence that were not before the Commission". Yet PRTC does not explain what it means by "types" of evidence, or where in the TRO such condition is mandated, or even how this supposedly necessary filtering of the evidence is to be accomplished. Furthermore, besides being vague and unsubstantiated, this argument completely disregards the Board's information gathering efforts.

The Board in this case issued two separate requests for information from the carriers operating in Puerto Rico and allowed carriers as part of this process to submit the information that they deemed relevant to the impairment analysis. TLD for instance did not participate in the national proceedings before the Commission but was one of the parties that provided information to the Board for its granular analysis. Additionally, it must be noted that the Board held two

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<sup>2</sup>TRO at ¶¶ 454-455.

public hearings allowing parties to voice their concerns and argue their positions regarding the existence of impairment in Puerto Rico markets. Thus, the Board was able to thoroughly examine and evaluate a wealth of evidence in order to conduct its impairment analysis and reach its conclusions.

### **3. Puerto Rico’s substantial operational barriers place it outside the national norm**

Notwithstanding the Board’s careful analysis, PRTC insists on arguing that nothing has shown that Puerto Rico is “differently situated from any other part of the United States” and that it is irrelevant “whether competition is less developed in markets in Puerto Rico than in markets in other states.” But PRTC itself has argued before the Commission that Puerto Rico is a high-cost telecommunications market.<sup>3</sup> Furthermore, the substantial operational barriers and slow rate of progress attained by competitors clearly signals that Puerto Rico is a high-cost and high-risk business environment for competing telecommunications companies and that this situation has significantly hindered the growth of facilities-based competition. Thus, the evidence examined by the Board provides ample support for concluding that the Commission’s general finding – that it is a viable competitive strategy to self-provision high-capacity switching and provide service with the use of unbundled loops, collocation, and backhaul transport – does not apply to Puerto Rico markets.

Moreover, PRTC’s track record in Puerto Rico leaves much to be desired. TLD’s experience with PRTC within the resale environment has been fraught with problems due in many cases to PRTC’s outdated systems and inadequate internal procedures. On the one hand,

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<sup>3</sup>See *Comments of Puerto Rico Telephone Company, Inc.*, “In the matter of Multy-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers”, CC Docket No. 00-256, February 14, 2002 at p.9.

the inaccuracy of PRTC's billing is astounding and resolving billing discrepancies can often take several months or even years. On the other hand, the mere transfer of enterprise market clients is generally quite problematic. For example, PRTC's billing procedures for government clients are mostly manual and new billing for transfers of government clients may take up to two months. Similarly, PRTC may take three to four months to complete transfers of accounts that have over a hundred associated lines or are otherwise considered "complex".

Beyond these problems, providing facilities for business clients that require coordination with PRTC, takes several months. To start, coordinating meetings with PRTC to define a client's requirements is a challenge and may take several weeks. Furthermore, once these requirements are defined, PRTC takes weeks to prepare the proposal. After the proposal is accepted, PRTC may then take forty-five (45) business days to provide the requested facilities.

PRTC's unresponsiveness is similarly evident in the context of TLD's latest efforts to negotiate a new interconnection agreement. For example, coordinating meetings with PRTC has taken up to two months. In some instances, agreements reached during these meetings have been changed unilaterally by PRTC. A number of interconnection agreement drafts have been generated and exchanged between the parties with PRTC taking several weeks to provide a feedback regarding these drafts. At one point in the negotiations, PRTC unilaterally changed the resale discount percentages that had been agreed between PRTC and TLD during the previous meetings. In other words, PRTC has made the process lengthy and tortuous.

These on-going problems, as well as various others conveyed to the Board, serve to illustrate the many operational barriers that have been faced and continue to be faced daily by competitive carriers in Puerto Rico. Such operational barriers extend to the enterprise market

where Puerto Rico paints quite a different picture from the competitive environment described by the Commission in the TRO.

Given the wide range of operational barriers existing within Puerto Rico, the experience of a uniquely situated carrier out of many does not prompt a conclusion suggested by PRTC that “it is economically feasible for facilities-based carriers to enter the Puerto Rico market, and that such carriers are not impaired.” If such were the standard, then the Commission could have simply defined this as a trigger for reaching a conclusion of no impairment. But the Commission wisely shied away from basing an impairment determination on the experience of a single carrier.

Puerto Rico simply does not fit into the national norm established by the Commission and the evidence before the Board supports the conclusion that self provisioning of high-capacity switching has not yet become a viable option. In this regard, it should be noted that PRTC’s contention that “many CLECs have chosen to take advantage of low-cost access to PRT switching facilities” is wrong. TLD is only aware of Worldnet competing through UNE-P and Worldnet indicated during the Board proceedings that it had yet to provide service to an enterprise customer through UNE-P.

**4. There is no evidence showing that Puerto Rico’s operational barriers have been or are about to be lowered**

Beyond the above, TLD expects that in the foreseeable future the provisioning and billing of UNEs and UNE-P will be at least as problematic as it has been with resale. In fact, since August of 2003, TLD has been waiting for PRTC to generate new billing cycles for the services that will be provided through UNE-P. The information on these billing cycles is the initial phase for providing services through UNE-P, but PRTC has yet to generate such cycles. There is also additional information and procedures, such as handbooks and billing information processes, that

TLD has requested and PRTC has not provided. In general, PRTC has not been diligent in providing TLD all the required information for TLD to start providing services through UNE-P, and in consequence TLD has been forced to devote its resources to following up with PRTC to obtain the agreed information. There is no reason to believe that these difficulties will be resolved in the near future.

### **III. CONCLUSION**

A strong showing of impairment has been made in this case. PRTC's only response has been that the evidence of impairment should be disregarded because it is now "willing and able" to adequately provide UNEs, collocation, and cross-connects. At the same time, PRTC states in its comments that state commissions "may not rely on mere guesswork or conjecture" to reach an impairment decision. TLD agrees that guesswork should not guide an impairment decision and respectfully submits that a decision relying on PRTC's statement that it is now "willing and able" to improve its historically inadequate systems and procedures, thus eliminating existing operational barriers, would be based on conjecture and not on evidence. The Board's Waiver Petition is supported by the evidence on record and should be granted.

RESPECTFULLY SUBMITTED,  
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PUERTO RICO, INC..

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